

COMMENTS

From the
UNITED MOTORCOACH ASSOCIATION

Relating to the

"Interstate School Bus Safety"

Before the
**UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

DOCKET NO. FMCSA-2000-7174

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RE:

Docket No. FMCSA-2000-7174

Federal Motor Carrier Safety Administration (FMCSA)

Interstate School Bus Safety

FROM:

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The United Motorcoach Association (UMA), formerly the United Bus Owners of America (UBOA), based in Alexandria, VA, represents more than 800 private, commercial, motorcoach and bus operating companies in North America. These companies perform a full range of services including scheduled intercity regular route, charter, tour, special operations, school, and public transit. Nearly all are subject to interstate authority though interstate operating authority is not a prerequisite to membership. In its position of advisor to and advocate for its member companies, UMA believes it is highly qualified to address the issue of extending the Federal Motor Carrier Safety Regulations (FMCSR) to all interstate school operations by local governmentally-operated educational agencies.

Within these comments, the UMA will directly address those individual questions posed by the FMCSA in its ANPRM of October 22, 2001. But at the outset, it may be valuable to restate the UMA's historic position on matters similar to this ANPRM:

It is and has long been the belief of the United Motorcoach Association that the entire range of FMCSR's should apply equally to all passenger-carrying vehicles which are defined by size or weight as commercial vehicles and to all vehicles which transport passengers for any form of compensation, even those which bear the insignia of "official" or "government" on their licenses. The life-and-death responsibility inherent in the job demands nothing less.

The UMA recognizes that regulatory oversight is expensive, burdensome and often intrusive. We

also recognize, however, that the safety regulations which apply to for-hire carriers are in place for a reason. Despite the fact that the commercial bus and motorcoach business today is one of America's safest forms of public transportation and is (happily) dominated by operators who go well beyond the regulatory minimums to ensure safe transport for their passengers, we also recognize that the practice of voluntarily doing things right is not universal. Without the FMCSR's, some carriers wouldn't even meet these minimum safety standards. Worse yet, without the FMCSR's, some carriers might not even consider the need for safety performance standards.

Unfortunately, regulations which are intended to ensure that minimum safety practices are employed can also -- unintentionally -- cause just the opposite effect. In a highly-regulated business environment, the lack of regulations sometimes conveys the message that oversight, diligence or basic rules aren't needed. We may see that phenomenon at work today in the very segment of the carrier community, which this ANPRM seeks to better understand. In specific, without an FMCSR-type of regulatory guidance or mandate on simple driving time, some government-owned school bus fleet managers or operators are tempted to believe that there is not risk involved with self-imposed driving limits. If there's a single place where the imposition of FMCSR's on this community of carriers might make an immediate impact to improve highway safety, it could be in the placement of hours-of-service limitations on this class of driver.

The UMA supports the application of all driver and vehicle FMCSR's to this class of vehicle operations, but the application of federal hours-of-service limits could be the most valuable benefit achieved.

We urge that the FMCSR's be made applicable to all governmentally-operated educational institutions and agencies, to provide all bus passengers with the minimum safety standards which apply today to commercial, for-hire, passenger carriers and to commercial contractors of school bus services.

Readers of these comments must understand that the UMA's position is not intended to serve as an indictment of the current state of student transportation or school bus safety. The UMA and its member

companies fully understand the complexity, cost and grave responsibilities of student transportation. For that matter, many UMA member companies are deeply involved in providing school bus service under contract. We can cite no circumstances where school bus providers -- either contracted or governmentally-owned -- have demonstrated anything less than the highest standards of and attention to safety. Many states have implemented greater safety oversight on the school bus community than they have on the commercial operators.

But the fact is that there is no universal minimum standard which applies to each and every school bus operation, leaving each state or local school district to its own decisions. Without the universal application of minimum safety standards such as those contained in the FMCSR's, neither the FMCSA nor local parents can automatically comfort themselves with the level of safety attentiveness being paid to this all-important issue.

While the UMA would like to address the issues and questions presented by the ANPRM of October 22, 2001, many of the statistical and state-specific inquiries contained in the questions can only be answered by individual states and/or local transportation systems. The UMA will not attempt to guess at the answers in these comments. We will take the occasion to observe, however, that we believe that the questions themselves indicate a significant failure of the current FMCSR applicability.

Today, the FMCSA can be assured that every commercial bus or motorcoach in America a) is being operated by a qualified, CDL-holding driver; b) has been inspected to federal standards at least once in the past 12-months; c) is insured by a qualified insurance carrier; and 4) can be taken off the road and kept off the road if the vehicle or the vehicle operator fails to abide by the minimum standards established within the FMCSR's. The same can't be said of every school bus simply because no common rules apply to all of them.

The UMA has always found it to be ironic that different standards and expectations have been placed on commercial drivers (compared to non-commercial, automobile, drivers) simply because of their choice of a career, the type of vehicle they choose to drive or the entity they choose to drive for.

Commercial drivers are required to meet minimum physical qualifications; they are mandated to rest for a minimum period of time before operating their vehicle; they are ordered to avoid the use of intoxicating beverages or debilitating drugs for a measured period of time before driving. At the scene of an accident, law provides only for the alcohol- or drug-testing of the commercial driver. Despite the fact that more than 65-percent of all commercial vehicle accidents are caused by non-commercial drivers, the rules of good driving sense are, by mandate, imposed only on the commercial driver. In reality, most commercial drivers are more experienced, better trained and more-highly skilled than non-commercial drivers, yet they remain the object of more suspicion than non-commercial drivers in virtually all occurrences where the two categories collide.

Why is it this way? The only plausible answer ever provided to the question of why these vastly-differing levels of regulatory oversight apply is "exposure." Because the commercial driver spends so much of his or her time behind the wheel, we are told that the statistical probability of encountering problems is significantly increased, justifying the higher levels of regulation.

Today, that seemingly incongruous regulatory pattern continues to draw a distinction between classes of drivers. In the case of school bus operations, however, the distinction is even less sensible. It isn't made because of the driver's exposure, but because of the status or motive of the operator who sends the driver out to work each day.

School bus drivers who work for contracted private operators must abide by the FMCSR's; those who work for a school district or government need not abide by them. The drivers work the same number of hours, face the same stresses and pressures, carry the same students to the same kinds of activities and, generally, earn the same wages. Yet only one of the classes of drivers -- those working for a "for-profit" contractor -- is regulated by minimum federal safety standards.

The UMA finds it impossible to understand or accept this kind of logic.

Similarly -- to address the ANPRM's Question 6 -- we find it impossible to understand why a set of minimum safety standards for all school bus operations should be limited only to those who may cross

an arbitrarily-established state boundary. Neither passengers nor drivers magically lose or gain an aura of invulnerability as they pass over those boundaries; states should be required to mirror the FMCSR's as minimum safety standards for all intrastate school bus operations, as well as for interstate operation. Nor do older school students, as mentioned in Question 9, grow or shed a cloak of protection based on the geography of the bus they're riding in.

By the same token, the UMA can find no reason why, as is asked in Question 10, the FMCSR's should not apply to home-to-school and school-to-home school bus operation. While there may be unique circumstances to be considered for some of those operations, the UMA believes that the FMCSR's are pliable enough to accommodate individual needs.

To address the issues of cost which is associated with Question 4, the UMA would first hope that the costs of compliance for most states and localities would be minimal based on our primary hope that most of the standards are already being met under voluntary compliance and local practices. If some governmentally-owned systems face significant compliance costs, however, the UMA can find no sympathy for them. Adherence to the FMCSR's and the necessary absorption of the costs associated that are the minimal investment which our own operator members must make. We warn all new operators that safety is not cheap. We also counsel them to avoid this line of work unless they are completely and unwaveringly dedicated to maintaining that level of safety.

Question 7 poses yet another aspect of the cost issue which the UMA has seen in the past: it is the question of levels and cost of enforcement. Sadly, the UMA has watched as regulators have judged the importance of highway safety issues not by the number of lives which they might save, but by the level of enforcement they could afford. We believe that nothing could be more wrong-headed.

Specifically, the Private Motor Carrier of Passengers rule, finally issued in 1994 to bring not-for-profit passenger carriers (schools, churches, travel clubs) under many of the FMCSR's, languished for almost 10-years between congressional mandate and rule-making only because regulators worried that they simply couldn't afford to add that many new charges to the base

federally-regulated carriers. In that instance, the database of carriers multiplied three-fold with adoption of the rule, but the worries about new enforcement costs never materialized.

More recently, the same regulators worried so much about the addition of commercial van and mini-bus operators in the so-called "nine to 15 passenger" rule, that they have applied absolute minimum safety standards on this population, in effect making at least three acts of recent congresses meaningless and, as a result, negating any safety enhancement that might have been realized by a tough, new rule.

The UMA fears that the regulator's apprehension over the cost of enforcement will also influence the FMCSA's response to this congressional proposal.

As an enlightening aside, one, now-retired, federal employee who participated in the drafting of the original Federal Motor Carrier Safety Regulations was asked by UMA why the magic number of 15-passengers was established by the drafters as the minimum size to be defined as a "commercial motor vehicle." His answer was that the 15-passenger threshold encompassed "just about as many carriers as we thought we could enforce." He also confirmed for us that the decision had nothing to do with the total population of commercial carriers that needed oversight, only with the population that he and his colleagues felt was manageable. No doubt, that question of "manageability" will resurface when field inspectors and roadside enforcement personnel are no longer in a position to ignore "officially-plated" school buses.

The UMA regrets that it continues to see that same criteria being applied today. But we also remind readers and the FMCSA that enforcement tools have dramatically changed since the mid-80's when "enforcement" was paper and gumshoe. The MCSAP program has vastly deepened enforcement personnel and contact points. Technology has offered spectacular ways to better utilize available enforcement personnel.

We remind the agency that the vast majority of newly-regulated carriers which might be expected to comply with this new extension of the FMCSR's should need no enforcement personnel assigned. These are, after all, governments with their own enforcement responsibilities. And, to remind the FMCSA of

one last -- obvious -- point, these are governments whom we are today totally trusting to be self-policing.

In summary, there are no compelling reasons why the FMCSR's should not be imposed on all school bus operators equally. We urge that the rule-makings to affect that change begin as soon as possible.

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